Single Bench

(3)

IN THE HIGH COURT OF JUDICATURE CHHATTISGARH AT BILASPUR

W. P. NO. 380 / 2005

PETITIONERS (Defendants) :

1. Manoj Kumar Kankarwal
S/o Late Shriram Kankarwal,
Aged about 32 years,
R/o Fames Hair cutting
Saloon, Raigarh,
Dist : Raigarh-(C.G.)

2. Manesh Kumar Kankarwal
S/o Late Shriram Nai,
Aged about 30 years,

3. Pankaj Kumar Kankarwal
S/o Late Shriram Nai,
Aged about 26 years,

2 & 3 are R/o Roop Lady World Raigarh, Dist : Raigarh-(C.G.)

P.R. No. 368/05
Presented by Shri Amit Agrawal
dated 28.01.05

Versus

Respondents (Plaintiff) :

1. Anant Kumar Jagatramka
S/o Ganesh Kumar Jagatramka, Aged about 36 years, Occupation Business, R/o Shyam Talkies Road, Raigarh, dist : Raigarh-(C.G.)

Defendant no.4 to 5

2. Mahesh Kumar Kankarwal
S/o Late Shriram Kankarwal,
Aged about 34 years,
R/o Kaserpara Raigarh,
Dist : Raigarh-(C.G.)

3. Mukesh Kumar Kankarwal
S/o Shriram Nai,
Aged about 36 years,
R/o Roop Beauty Parlour
Raigarh, Dist : Raigarh-(C.G.)

4. Smt.Dharmadevi
W/o Shriram Nai,
Aged about 60 years,
Kaserpara, Raigarh
Dist : Raigarh-(C.G.)

शपथ आयुक्त
एस.के. शुक्ला
बिलासपुर (छ.ग.)
बिलासपुर तहसील कोर्ट

(30)

XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P. No. 780/05 **सन्** 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	9-2-2005 Shri Amit Sharma, counsel for the petitioners. Heard on admission. The petitioners have preferred this writ petition under Article 227 of the Constitution of India being aggrieved by the order dated 10-1-2005 passed by the Civil Judge, Class-I, Raigarh, whereby the learned Civil Judge has rejected the application of the petitioners filed under Order 26 Rule 9 of the C.P.C. for appointment of a commissioner for local investigation. Brief facts leading to filing of this writ petition are that respondent No.1 herein has filed the civil suit against the petitioners and respondents No.2 to 4 for eviction from the disputed shop on the ground of bonafide need. Reply of the petitioners herein is that the plaintiff is already in possession of the shop adjacent to the disputed shop and he is doing the business in that shop, therefore, alternative accommodation is already available with him and the plaintiff has denied that fact in his evidence, therefore, it has become necessary to prove that fact by appointing a commissioner to go and investigate the spot and submit his report. I have perused the impugned order in which the learned trial Court has categorically stated that the said fact can be proved by adducing necessary evidence by the parties and for that purpose no	

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

commissioner is required to be appointed for local investigation. The provisions of Order 26 Rule 9 of the C.P.C. envisages that 'where the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court.' After going through the rival contentions of the parties, the learned Civil Judge has passed the impugned order that the appointment of commissioner for local investigation is not necessary.

In the facts and circumstances of the case, I am of the opinion that the learned Civil Judge has not exercised the jurisdiction which is not vested in him or has not failed to exercise the jurisdiction which is vested in him and by passing impugned order the learned Civil Judge has not committed any illegality, therefore, no interference is required. The writ petition is liable to be dismissed and it is accordingly dismissed.

Consequently, M.(W.)P. No.327/2005 and I.A. No.800/2005 stand disposed of.

Sd/-
L.C. Bhadoo
Judge

Barve